IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY SECOND DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 10019 of 2004

Between:

1 Kusam Maheswara Reddy S/o Nagendra Reddy
R/o Namburu Village Peddakakani mandal, Guntur District
2 Jonnala Sambi Reddy S/o Nagi Reddy
R/o Namburu Village Peddakakani mandal, Guntur District
3 Manukonda Malla Reddy S/o Venkatasubba Reddy
R/o Namburu Village Peddakakani mandal, Guntur District
4 Manukonda Pulla Reddy S/o Venkatasubba Reddy
R/o Namburu Village Peddakakani mandal, Guntur District
5 Manukonda Veera Reddy S/o Venkatasubba Reddy
R/o Namburu Village Peddakakani mandal, Guntur District

..... PETITIONERS

AND

1 The District Collector, Guntur, Guntur District
2 The Mandal Revenue Officer, Paddakakani Mandal, Guntur District

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate Writ, order or direction more particularly one in the nature Writ of Mandamus to declaring the action of the respondents in interfering with the possession and enjoyment of the petitioners in respect of the land to an extents of Ac. 1-92 cents, Ac 2-97 cents Ac. 1-87 Cents Ac. 1-87 cents Ac. 1-87 cents, in Sy. Nos. 24/1, 24/2 & 38 of Peddakakani Village, Peddakakani Mandal, Guntur District as illegal unjust violation of principles of natural justice, arbitrary, malafide, illegal without jurisdiction and consequently the respondents be directed not to evict the petitioners from the lands.

Counsel for the Petitioner: MR.S.V.MUNI REDDY

Counsel for the Respondent No.: GP FOR REVENUE

The Court made the following:

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY SECOND DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 10021 of 2004

Between:

1 Nallagorla Koteswara Rao, S/o. Sambaiah,
Uppalapadu Village, Peddakakani Mandal,
Guntur District.
2 Nallagorla Sivanageswara Rao, S/o. Sambaiah,
Uppalapadu Village, Peddakakani Mandal,
Guntur District.
3 Nallagorla Rosaiah, S/o. Sambaiah,
Uppalapadu Village, Peddakakani Mandal,
Guntur District.
4 Madiraju Raghavarao, S/o. M.S.S.L., Narayanarao,
Uppalapadu Village, Peddakakani Mandal,
Guntur District.
5 Myla Venkateswara Rao, S/o. Pedda Basavaiah,
Uppalapadu Village, Peddakakani Mandal,
Guntur District.
6 Myla Venkataswamy, S/o. Pedda Basavaiah,
Uppalapadu Village, Peddakakani Mandal,
Guntur District.

7 Myla Anjaneyulu, S/o. Pedda Basavaiah,
Uppalapadu Village, Peddakakani Mandal,
Guntur District.
8 Myla Sadasiva Rao, S/o. Pedda Basavaiah,
Uppalapadu Village, Peddakakani Mandal,
Guntur District.
9 Degala Appamma, W/o. Sambaiah,
Uppalapadu Village, Peddakakani Mandal,
Guntur District.
10 Pokala Mahalakshmamma, W/o. Nagendram,
Uppalapadu Village, Peddakakani Mandal,
Guntur District.
11 Gangisetti Sivaiah, S/o. Buchaiah,
Uppalapadu Village, Peddakakani Mandal,
Guntur District.
12 Dantala Radhaiah, S/o. Appaiah,
Uppalapadu Village, Peddakakani Mandal,
Guntur District.

..... PETITIONERS

AND

1 The District Collector, Guntur, Guntur District.
2 The Mandal Revenue Officer, Peddakakani Mandal, Guntur District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ, order or direction more particularly one in the nature of writ of Mandamus to declare the action of the respondents in interfering with the possession and enjoyment of the petitioners in respect of the land to an extents of Ac.0-45 cents, Ac. 0-45 cents, Ac. 0-45 cents, Ac.0-90 cents, Ac 1-80 cents, Ac 0-90 cents, Ac. 0-90 cents, Ac-0-90 cents, Ac 0-50 cents, Ac.0-50 cents, Ac 1-90 cents, AAc 1-90 cents in Sy.Nos. 494 & 495 of Uppalapadu Village, Peddakakani Mandal, Guntur District, as illegal, unjust violation of principles of natural justice, arbitrary, malafide, illegal without jurisdiction and consequently the respondents be directed not to evict the petitioners from the lands and to pass

Counsel for the Petitioner: MR.S.V.MUNI REDDY

Counsel for the Respondent No.: GP FOR REVENUE

The Court made the following:

WRIT PETITION NO.10019 OF 2004

AND

WRIT PETITION NO.10021 OF 2004

COMMON ORDER :

Since common questions of fact and law arise for consideration, these two writ petitions are heard together and decided by this common order.

There are five petitioners in W.P.No.10019 of 2004. It is claimed that they have been in possession and enjoyment of small extents of land situated in Sy.No.24/1, Sy.No.24/2 and Sy.No.38 of Peddakakani Village and Mandal, Guntur District. Their case is that the one Kidimbi Tirumalacharyulu @ Ramanujacharyulu was

the owner of the said land and during his lifetime the small extents of land, which are the subject mater of this writ petition are leased out to the ancestors of the petitioners in the year 1970 and since then the ancestors and thereafter the petitioners have been continuing in possession and cultivating the same by raising Paddy, Blackgram and other crops.

W.P.No.10021 of 2004 has been filed by the twelve petitioners who also claimed to have been in possession and enjoyment of small extents of land situated in Sy.Nos.494 and 495 of Uppalapadu village, Peddakakani Mandal, Guntur District. They also claimed to be the cultivating tenants having obtained the lease from Kidimbi Tirumalacharyulu during his lifetime in the year 1970. All the petitioners stated that they have been paying the maktha to the landholder and also cist to the Government.

While so, it is alleged that during the month of June, 2004, the second respondent – Mandal Revenue Officer, Peddakakani Mandal came to the land of the petitioners in occupation along with his subordinates and attempted to dispossess the petitioners highhandedly. In the circumstances, these two writ petitions are filed seeking a declaration that the alleged action of the respondents in interfering with the possession and enjoyment of the petitioners in respect of the lands in question is arbitrary or illegal and without jurisdiction.

This Court while directing *Rule Nisi*, by order dated 18-06-2004 directed that Status Quo obtaining as on that date with regard to the possession of the lands in question shall be maintained.

On receipt of notice, the second respondent – Mandal Revenue Officer filed

separate counter-affidavits in the two writ petitions stating that Sri Kidimbi Tirumalacharyulu who was having extensive agricultural lands in various villages including Uppalapadu and Peddakakani villages filed a declaration in C.C.No.618/GNT/75 on 11-04-1975. He was issueless and one K.Venkata Seshatalpa Sai claiming to be the adopted son of Kidimbi Tirumalacharyulu filed a separate declaration in C.C.No.1952/GNT/75. While the matter was pending before the Land Reforms Tribunal, Kidimbi Tirumalacharyulu died on 03-09-1976. Since his wife pre-deceased him and since there was nobodyelse to claim the property, the entire extent of Ac.174-26 cents was held to be excess. Insofar as the other declarant Sri K.Venkata Seshatalpa Sai is concenrd, he was held to be a non-surplus holder. However, one Mr. Samavedam Rama Krishana claiming to be the tenant filed L.R.A.No.91 of 1994 and K.Venkata Seshatalpa Sai also filed L.R.A.No.111 of 1995. The said Appeals were allowed by the Appellate Tribunal by order dated 06-05-1997 and the matter was remanded to the Tribunal for consideration afresh about the claim of the appellants. In pursuance thereof, notices were issued to the persons claiming to be the tenants and also to Sri Venkata Seshatalpa Sai. However, they did not produce any evidence before the Tribunal to substantiate their possession and consequently by order dated 02-09-2003 the Tribunal passed the orders rejecting their claims. Consequently, the Mandal Revenue Officer was directed to take possession of the lands since there was nobody to claim the lands on behalf of the original claimants. In pursuance thereof, the Mandal Revenue Inspector-I, Peddakakani has taken possession of the lands on 14-06-2004 under a panchnama as the lands are free from occupation by any person. It is alleged that subsequently the petitioners, in spite of the protest by the second respondent, entered into the lands illegally and raised the crops. It is pleaded that the petitioners were never in possession of the lands in question at any point of time much less on the date of the interim orders of *Status Quo* passed by this Court on 18-06-2004. It is also contended that since the petitioners have illegally entered into the lands they are not entitled to harvest the crops and that the officials may be permitted to auction the usufruct and to deposit the same in the Government Treasury.

It is also relevant to note that the petitioners in both the writ petitions filed separate applications W.P.M.P.Nos.30439 of 2004 and W.P.M.P.No.30436 of 2004 seeking a

further direction to the respondents not to interfere with the harvesting of the Cotton and Paddy crops raised by them in the lands in question. Their plea was that by the date of the order of Status quo, dated 18-06-2004 they were in possession and that they raised the Cotton and Paddy crops, however, despite the Status quo orders granted by this Court the second respondent and his subordinates are interfering with the possession and enjoyment of the lands in question and preventing them from harvesting the crops raised by them. The said petitions have now been listed for orders. However, since the respondents have already filed the counter-affidavits in the writ petitions, with the consent of the learned Counsel for both the parties the main writ petitions have been heard and disposed of by this common order.

The learned Counsel for the petitioner vehemently contends that the material on record clearly shows that the petitioners have been in possession of the land in question for past several years and that the action of the respondents in attempting to dispossess them without following due process of law is arbitrary and illegal.

On the other hand, the learned Government Pleader contends that the petitioners or their predecessors were never in occupation of the lands in question and that is the reason why they have not participated in the proceedings before the Land Reforms Tribunal. It also contended that the lands belonging to late Kidimbi Tirumalacharyulu were taken possession on 14-06-2004 itself i.e., even prior to the order of Status Quo passed by this Court and therefore the lands vest with the Government and the petitioners cannot claim any right either to continue in possession or to harvest the crops.

It is to be noted that though it is contended by the respondents that in pursuance of the orders passed by the Land Reforms Tribunal, the lands in question which originally belonged to the declarant late Kidimbi Tirumalacharyulu were taken possession on 14-06-2004 itself, nothing has been placed before this Court to substantiate the said plea. On the other hand, the specific case of the petitioners is that they have been in possession and enjoyment of the lands in question for the past several years and in support of the said plea some receipts of the year 1993

onwards issued by the State Irrigation Development Corporation acknowledging the payment of the charges under the Lift Irrigation Scheme by the petitioners as tenants of Kidimbi Tirumalacahryulu have been placed before this Court. That apart, the land cist receipts dated 26-06-2003 which also bear the names of some of the petitioners have been placed before this Court which *prima facie* show the possession of the petitioners prior to the order of *Status Quo* dated 18-06-2004 granted by this Court. As a matter of fact, even according to the respondents, as on today the petitioners are in actual possession of the lands, however, it is alleged that they have subsequently entered into the lands illegally and raised the crops. Though, normally this Court while exercising jurisdiction under Article 226 of the Constitution of India, decline to go into such disputed questions of fact, the law is well settled that there is no absolute bar for entertaining a writ petition even it involves some disputed questions of fact and in appropriate cases this Court can grant the necessary relief so as to meet the ends of justice. In the case on hand, having regard to the material available on record which *prima facie* shows the possession of the petitioner even prior to the filing of writ petitions and since admittedly as on today the petitioners are in possession, and even according to the respondents there is standing crop raised by the petitioners, I am of the view that it is necessary in the interest of justice to protect their possession and to permit them to harvest the crops.

Accordingly, the Writ Petitions are disposed of with a direction to the respondents not to interfere with the possession of the petitioners in respect of the lands in question without following due process of law. Since there is no dispute about the fact that the petitioners have raised the crops on the lands in question, there shall be a direction to the respondents not to obstruct them to harvest the crops. However, it is made clear that this Court has not expressed any opinion as to the right of the petitioners to continue in possession and it is always open to the respondents to take appropriate steps for recovery of the possession from the petitioners following due process of law.

Both the Writ Petitions are accordingly disposed of. No costs.

22nd December, 2004.

Note:- Office is directed to put up

a copy of this order in W.P.No.11021

of 2004 after signatures of the Hon'ble

Judge.

(B/O)

gbs

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The District Collelctor,

Guntur District.

2. The Mandal Revenue Officer,

Peddakakani Mandal, Guntur District.

3. Two C.Cs. to the Government Pleader for Revenue, High Court Buildings, Hyderabad. (OUT)

4. Two C.D. copies.